



June 26, 2001

Mr. Steve Martin  
Assistant General Counsel  
Texas Department of Banking  
2601 North Lamar Boulevard  
Austin, Texas 78705-4294

OR2001-2706

Dear Mr. Martin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148767.

The Texas Department of Banking (the "department") received a request for "a copy of any application made by Bancomer Transfer Services, Inc. to the [department] to conduct business in the U.S. as a money transmitter." You claim that a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 152.105 of the Finance Code provides, in relevant part:

information obtained by the [banking commissioner of Texas] or the [Finance Commission of Texas] under [chapter 152 of the Finance Code] from a person who holds a license under [chapter 152] or through an examination or a file or record of the department relating to that information is confidential and may not be disclosed if the information:

- (1) relates to the financial condition of the license holder; or
- (2) is proprietary information of the license holder, as determined by the commissioner.

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<sup>1</sup>Because you seek to withhold only "portions" of the requested information, we assume you have released the remainder of the requested information. See Gov't Code §§ 552.021, .301, .302.

Fin. Code § 152.105(a). Section 152.105 also provides for specific circumstances in which information that is made confidential under that section may be released. *See id.* § 152.105(a), (b). You indicate that the submitted information was obtained by the banking commissioner. You also indicate that the information relates to the financial condition of Bancomer Transfer Services, Inc. ("Bancomer") and that Bancomer holds a Sale of Checks license issued under chapter 152. Based on your comments and our review of the submitted information, we agree that the information is confidential under section 152.105 of the Finance Code and must be withheld under section 552.101 of the Government Code.<sup>2</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

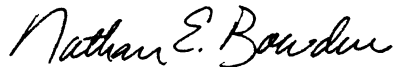
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<sup>2</sup>We note that it does not appear that any of the exceptions to confidentiality listed in section 152.105(b) apply.

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/sdk

Ref: ID# 148767

Enc. Submitted documents

c: Ms. Cathleen Tefft  
Mayer, Brown & Platt  
1909 K Street, NW  
Washington, DC 20006  
(w/o enclosures)